

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON

RIVERBANK, a Washington State Chartered  
Bank

Plaintiff,

v.

M/V ROCK A BYE, Official No. 1152013, her  
engines, boilers, machinery, components, etc.,  
*in rem*  
and  
JOHN GF HIEBER JR. and DEBRA A.  
HIEBER, individually and on behalf of their  
marital community, *in personam*

Defendants.

AT LAW AND IN ADMIRALTY

NO.

VERIFIED COMPLAINT TO  
FORECLOSE PREFERRED SHIP  
MORTGAGE *IN REM* AND *IN*  
*PERSONAM*

Plaintiff, RIVERBANK, a Washington State Chartered Bank, by and through its  
attorneys, Witherspoon Kelley, files the following Verified Complaint *in rem* and *in personam*,  
alleging as follows:

**I. PARTIES, JURISDICTION AND VENUE.**

1.1 Status of Plaintiff. Plaintiff RiverBank is a Washington State Chartered Bank  
("RiverBank"), with its principal place of business in Spokane County, Washington. RiverBank

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{S1666945; 1}

 **WITHERSPOON•KELLEY**  
Attorneys & Counselors

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1 is the holder of the Promissory Note, the Preferred Marine Mortgage, and other loan documents  
2 described below.

3 1.2 Status of Defendants.

4 1.2.1 Upon information and belief, the *in rem* defendant vessel *ROCK A BYE*,  
5 Official Number 1152013, (1) is owned by *in personam* defendants, John GF Hieber Jr. and  
6 Debra A. Hieber; (2) is now afloat upon the navigable waters of the United States and within the  
7 jurisdiction of this court; (3) has been, from December 2, 2014, and at all times since, duly  
8 enrolled under the laws of the United States, authorized to engage in the coastwise and registry  
9 trades; and (4) is currently located at Pacific Marine Center, 2302 T Avenue, Anacortes,  
10 Washington 98221, rather than at her Hailing Port which is the Seattle Yacht Club, 1807 E.  
11 Hamlin Street, Dock #3, Seattle, Washington 98112.

12 1.2.2 Upon information and belief, *in personam* defendants John GF Hieber Jr.  
13 and Debra A. Hieber are and at all times relevant hereto were residents of Washington. All things  
14 done by John GF Hieber Jr. were done for himself and on behalf of his marital community.

15 1.3 Jurisdiction and Venue. This court has subject matter jurisdiction pursuant to 28  
16 U.S.C.A. § 1333 and the Ship Mortgage Act, 46 U.S.C.A. §§ 30101, 31301 to 31343. This action  
17 is a maritime and admiralty claim within the provisions of Fed. R. Civ. P. 9(h) and within the  
18 Federal Supplemental Rules of Civil Procedure for Certain Admiralty and Maritime Claims.  
19 Venue is proper because the vessel *ROCK A BYE* is currently located within the jurisdiction of  
20 this Court.

21 1.4 Other Suits or Actions. Upon information and belief, there are no other suits or  
22 actions pending for the obligations in this matter.

23 **II. BACKGROUND**



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1           2.1     On or about January 10, 2013, *in personam* defendants, John GF Hieber Jr. and  
 2 Debra A. Hieber the Hiebers (collectively, "*in personam* defendants") purchased the vessel at  
 3 issue in this action from Angele Correll. A true and correct copy of the Bill of Sale is attached  
 4 hereto as Exhibit A and fully incorporated herein by reference.

5  
 6           2.2     On or about December 2, 2014, for valuable consideration, *in personam* defendant  
 7 John GF Hieber Jr. individually and on behalf of his marital community, made, executed, and  
 8 delivered to RiverBank a Promissory Note ("Original Note"), in the original principal amount of  
 9 \$350,000. A true and correct copy of the Original Note is attached hereto as Exhibit B and fully  
 10 incorporated herein by reference.

11  
 12           2.3     On or about March 31, 2015, *in personam* defendants refinanced the Note and  
 13 executed and delivered to RiverBank a Promissory Note, in the original principal amount of  
 14 \$470,000 ("Note"). A true and correct copy of Note is attached hereto as Exhibit C and fully  
 15 incorporated herein by reference.

16  
 17           2.4     The Note was subsequently amended through Change in Terms Agreements dated  
 18 December 2, 2015, April 15, 2016, September 27, 2016, January 23, 2017, April 5, 2017, and  
 19 October 2, 2017 each extending the maturation date of the Note. The last executed Change in  
 20 Terms Agreement, October 2, 2017, extended the maturation date of the Note to December 15,  
 21 2017. True and correct copies of the Change in Terms Agreements are attached hereto as Exhibit  
 22 D and fully incorporated herein by reference.

23  
 24           2.5     On or about December 2, 2014, in order to secure payment of the Original Note,  
 25 *in personam* defendants, in accordance with and pursuant to, the Ship Mortgage Act of 1920, as  
 26 amended, executed and delivered a Preferred Marine Mortgage encumbering the defendant  
 27 vessel ROCK A BYE, Official Number 1152013, to RiverBank as mortgagee ("Mortgage"). A  
 28



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1 true and correct copy of the Mortgage is attached hereto as Exhibit E and fully incorporated  
 2 herein by reference. The Mortgage was properly recorded by the United States Coast Guard  
 3 National Vessel Documentation Center on December 12, 2014, Batch No. 24369200, Doc No. 5.

4  
 5 2.6 On or about April 3rd, 2015, the *in personam* defendants amended the Mortgage  
 6 ("Amended Mortgage") (collectively "Mortgages") to reflect the increased amount of the Note  
 7 (\$470,000 rather than \$350,000) which it was securing. A true and correct copy of the Amended  
 8 Mortgage is attached hereto as Exhibit F and fully incorporated herein by reference. All of the  
 9 acts and things required to be done in order to give the Amended Mortgage the status of a First  
 10 Preferred Ship Mortgage constituting a first preferred mortgage lien on ROCK A BYE, in  
 11 accordance with United States law, were done or caused to be done including properly recording  
 12 the Amended Mortgage with the United States Coast Guard National Vessel Documentation  
 13 Center on May 4, 2015, Batch No. 27340900, Doc. ID 4. Attached as Exhibit G is a true and  
 14 correct copy of an Abstract of Title issued on February 26, 2018, by the Director at the National  
 15 Vessel Documentation Center, showing that RiverBank is the holder of a preferred mortgage  
 16 encumbering the Defendant vessel, Official No. 1152013.

17  
 18  
 19 2.7 According to the terms of the Mortgages, the *in personam* defendants granted,  
 20 conveyed, pledged, confirmed, assigned, transferred, and set over to RiverBank all of their  
 21 present and future right, title, and interest in and to the whole vessel ROCK A BYE without  
 22 limitation and including fishing rights in order to secure the payment of the Note and all other  
 23 obligations of the Mortgages.

24  
 25 2.8 A mortgage that complies with the requirements of 46 U.S.C. § 31322 - as  
 26 Riverbank's Amended Mortgage does - is a "preferred" mortgage that has priority over all claims  
 27  
 28

1 against a vessel except for expenses allowed by the court and preferred maritime liens. *See* 46  
 2 U.S.C. § 31326(b)(1).

3       2.8     *In personam* defendants have breached the terms of the Note, the Change in  
 4 Terms Agreement, the Mortgage, and the Amended Mortgage (collectively "Loan Documents")  
 5 by failing to make the December 15, 2017 payment when due. Although *In personam* defendants  
 6 are aware that the full amount under the Note is due and owing, they have failed to cure the  
 7 default.  
 8

9       2.9     Because of said defaults, as provided for in the Note and in the Mortgages,  
 10 RiverBank has elected to declare the entire unpaid principal plus all accrued interests and costs  
 11 due.  
 12

13       2.12    The Note provides that borrower (*in personam* defendants) agrees to pay all  
 14 expenses, including attorneys' fees, incurred by lender for collecting any amounts owed on the  
 15 Note and related documents.  
 16

17       2.2     The Mortgages also provide that grantor (*in personam* defendants) agrees to pay  
 18 all expenses, including attorneys' fees, incurred by lender in connection with the enforcement of  
 19 the Mortgage. Additionally, the Mortgages provide that grantor unconditionally agrees to repay  
 20 lender any Advances or Additional Advances made by lender on grantor's behalf, including but  
 21 not limited to moorage fees, insurance premiums, repairs. In the event of default, grantor also  
 22 agrees to pay all costs and expenses related to foreclosing on the collateral, including costs  
 23 related to the arrest, seizure, storage, and sale of the collateral.  
 24

25       **III.     FIRST CAUSE OF ACTION MONEY DUE UNDER FIRST RESTRUCTURE**  
 26               **NOTE AND SECOND RESTRUCTURE NOTE**  
 27  
 28



1           3.1    Reallegation.   RiverBank realleges each and every one of the preceding  
2 paragraphs with the same force and effect as if set forth here verbatim.

3           3.2    The Ship Mortgage Act provides for deficiency action against mortgagor. The  
4 Ship Mortgage Act, 1920, 46 U.S.C. § 911 *et seq.* (1982), repealed and recodified as amended at  
5 46 U.S.C. § 30101 *et seq.* (effective Jan. 1, 1989), provides that upon default the mortgagee may  
6 bring a suit *in rem* in admiralty to enforce the lien and the mortgagee may also bring suit *in*  
7 *personam* in admiralty against the mortgagor for the amount of "the outstanding [mortgage]  
8 indebtedness secured by the mortgaged vessel. . . or any deficiency in the full payment thereof."  
9 46 U.S.C. § 31325; *see also Nate Leasing Co. v. Wiggins*, 114 Wash. 2d 508, 513-14, 789 P.2d  
10 89, 91-92 (1990). The district courts of the United States have exclusive jurisdiction all civil  
11 cases of admiralty or maritime jurisdiction . . . [and] all other remedies to which they are  
12 otherwise entitled. 28 U.S.C. § 1333.

13           3.3    RiverBank has Performed.   RiverBank has performed all conditions and  
14 obligations as required to be performed pursuant to the Loan Documents.

15           3.3    Default and Acceleration. As described above, the Note matured on December 15,  
16 2017. *In personam* defendants failed to make the required payment on or before December 15,  
17 2017. To date, *in personam* defendants have still not made the required payments and thus, are in  
18 default to RiverBank on the aforementioned Loan Documents. Because of said default,  
19 RiverBank declares the entire amount owing to RiverBank due and owing.

20           3.4    Amount Due. As of March 8, 2018, there is a total of \$490,690.16 in unpaid  
21 principal, interest, and charges due and owing on the Note. The Note and Change in Terms  
22 Agreement provide that, upon default, the interest rate shall be increased to 21% per annum. At  
23 that rate of interest, interest on the entire amount due accrues at \$279.60 per day. Interest and  
24



charges are continuing to accrue and now costs have begun to accrue as RiverBank has been forced to advance costs for moorage fees, insurance premiums, and repairs pursuant to the terms of the Loan Documents because *in personam* defendants have failed to make such required payments. Additionally, RiverBank will be incurring significant costs and attorneys' fees associated with bringing this action, as well as the arresting, storing, and selling of the defendant vessel.

#### IV. SECOND CAUSE OF ACTION IN REM ARREST OF VESSEL

3.1 Reallegation. RiverBank realleges each and every one of the preceding paragraphs with the same force and effect as if set forth here verbatim.

3.2 RiverBank has Performed. RiverBank has performed all conditions and obligations as required to be performed pursuant to the Loan Documents.

3.3 Default under the Loan Documents. As described above, the *in personam* defendants have defaulted under the Loan Documents.

3.3 Riverbank entitled to Possession of Defendant Vessel ROCK A BYE. By reason of the *in personam* defendants' defaults under the Loan Documents, and by reason of RiverBank's holding a valid preferred ship mortgage lien encumbering all of *in personam* defendants' right, title and interest in and to defendant vessel ROCK A BYE, RiverBank is entitled to enforce the preferred mortgage lien in a civil action *in rem*. 46 U.S.C. § 31325.

3.4 Warrant for the Arrest. Pursuant to 46 U.S.C. §§ 31320-31325, Fed. R. Civ. P. 9(h), and the Federal Supplemental Rules of Civil Procedure for Certain Admiralty and Maritime Claims, RiverBank seeks a warrant *in rem* for the maritime arrest of defendant vessel ROCK A BYE Official Number 1152013.

#### VII. PRAYER FOR RELIEF.



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WHEREFORE, plaintiff, RiverBank, prays for relief as follows:

1. That plaintiff be awarded judgment against defendant vessel, ROCK A BYE, Official No. 1152013, her engines, boilers, machinery, components, etc., *in rem*, and against defendants John GF Hieber Jr. and Debra A. Hieber, severally and jointly, *in personam*, for the following amounts:

- a. \$490,690.16 together with prejudgment interest from February 8, 2018 at the rate of \$279.60 per day; and
- b. Postjudgment interest at the federal rate, from the date of entry of judgment until paid; and
- c. All costs of this action, including charges for all fees for keepers and their costs incurred in this action and for all expenses for the arrest, custody, storage, insurance, and sale of the defendant vessel; and
- d. Reasonable attorneys' fees; and

2. The plaintiff be adjudged the holder of the first preferred ship mortgage on the ROCK A BYE, Official Number 1152013, for the payment of the judgment *in rem*; and

3. This Court declare the lien of the Amended Mortgage to be superior to all other liens which may exist against defendant vessel; and

4. That process in due form of law issue against defendant vessel; and

5. That the Amended Mortgage be foreclosed and the defendant vessel, ROCK A BYE, Official Number 1152013, her engines, boilers, machinery, components, etc., be sold in accordance with the law and that the proceeds of the sale be applied and delivered to pay the demands and claims of plaintiff in the amount and to the extent set forth herein, together with all costs and attorneys' fees, and that it be declared that any and all persons, firms, and corporations



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claiming any interest in the defendant vessel be forever foreclosed of and from all rights of equity or redemption of claim in or to the defendant vessel; and

6. That at the sale of the defendant vessel, ROCK A BYE, Official Number 1152013, plaintiff be permitted, but not required, to bid without cash deposit up to the extent of its judgment; and

7. That plaintiff have and recover from John GF Hieber Jr. and Debra A. Hieber, the *in personam* defendants, any deficiency after the application and delivery of the net proceeds of sale of defendant vessel, on the judgment requested herein; and

8. That in the event the defendant vessel is sold to any party other than plaintiff, the amount received by plaintiff from the sale be credited against the *in personam* judgment granted herein but that, in the event plaintiff is the successful bidder, the amount credited against the *in personam* judgment be the proceeds of the subsequent sale of the defendant vessel, net all of the costs of repair, care, custody, and sale; and

9. That plaintiff may have such other and further relief as the Court deems just and equitable.

DATED this 14th day of March, 2018

WITHERSPOON • KELLEY

By:

/s/ Michael D. Currin

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